

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA)
)
 v.) Case No. 3:18-CR-112 JD
)
CJ CHIKA NWOKAH)

OPINION AND ORDER

Defendant CJ Chika Nwokah has been indicted with possessing with intent to deliver heroin, attempting to possess with intent to deliver over 100 grams of heroin, and being an illegal alien in possession of firearms [DE 10]. The criminal conduct is alleged to have occurred on or about September 6, 2018—the date upon which a search warrant was executed at Nwokah’s residence leading to the discovery of illegal drugs and guns. Nwokah also made incriminating statements to police. Nwokah has now moved to suppress the evidence, arguing that the search of the home was unlawful and his statements were fruit of the poisonous tree (or, were otherwise made under duress). For the following reasons, the Court denies the motion.

I. FACTUAL BACKGROUND

In late August 2018, Agent Marc Rochon of the United States Department of Homeland Security Investigations (“HSI”) was notified that the border control agency in Great Britain had identified a package originating from Uganda and heading to the United States which contained narcotics [Exb. 1]. The package was provided to pilots of a commercial flight heading to Chicago O-Hare International Airport, where Agent Rochon and other law enforcement agents retrieved it. Upon opening the package in Chicago, a pound of heroin (over 400 grams) was found sewn inside a gold sash [Exbs. 3, 4]. The package was addressed to Martin Nguyen at 21250 Roosevelt Road, South Bend, Indiana, 46614 [Exbs. 1, 2]. Research revealed no connection between the intended recipient and the address; however, agents learned that just

weeks prior, a similar package was delivered from Uganda to the same Roosevelt Road home. Thus, agents decided to conduct a controlled delivery of the package in order to determine who was expecting the second delivery of drugs from overseas. Law enforcement first surveilled the Roosevelt Road home in anticipation of conducting the controlled delivery, but during that short time didn't notice anything out of the ordinary.

Before delivering the package, agents removed the heroin and replaced it with a look alike substance, installed a GPS unit to detect the package's movement, and inserted a type of trip wire and contact powder (visible under ultra-violent light) to detect the package's opening. On September 5, 2018, Agent Rochon submitted an application and affidavit to a federal magistrate judge to obtain a search warrant for the Roosevelt Road home [Exb. A]. In support of the warrant, Agent Rochon's affidavit set forth his decade's worth of experience with HSI and familiarity with investigations involving the trafficking of controlled substances. He detailed HSI's discovery and search of the package from Uganda which revealed a pound of heroin sewn into a gold colored sash. He then set forth that within seven days law enforcement would conduct a controlled delivery of the package to the Roosevelt Road home under the following circumstances:

If the package is accepted by the occupant of the above address, by signing the invoice for verification of receipt and taken into the residence in that time period, HSI would seek to search that address 21250 Roosevelt Road in South Bend, Indiana 46614. If the package delivered to the residence is left on the porch as no one answers the door, HSI officers will conduct surveillance, watching the package. If someone subsequently takes the package into the residence, HSI would seek to search address 21250 Roosevelt Road, South Bend, Indiana 46614.

[Exb. A]. It was Agent Rochon's belief that evidence of a conspiracy to distribute and possess with intent to distribute controlled substances would be located at the Roosevelt Road home once the package was delivered. The search warrant issued later that day [Exb. B].

Agent Rochon testified at the suppression hearing that the language of the warrant's application was intended to mimic what he believed was required by the postal service to deliver the package. In other words, at the time Agent Rochon secured the search warrant, he believed that a signature would be required if someone immediately accepted the package upon delivery.

On September 6, 2018, United States Postal Inspector Brock Zeeb met with HSI agents, including Agent Rochon and Agent Geoffrey Howard, for his initial "briefing" relative to the delivery of the package. While Inspector Zeeb had been given a packet of information concerning the operation that morning, he hadn't read it and he was not aware of the contents of the search warrant's application. During the briefing, Inspector Zeeb was not told how to deliver the package; rather, he explained to Agent Rochon for the first time that the package did not require any signature and that to require one would be odd (and, thus, might raise suspicion). Accordingly, when Inspector Zeeb delivered the package that morning, he used the Post Office's standard procedure, which was to knock, yell "Post Office," and hand the package to the person who answered the door.¹ Ultimately, it was the defendant, CJ Chika Nwokah, who accepted the package as Inspector Zeeb was about to leave it on the porch. In accepting the delivery, Nwokah testified that he did not identify himself or sign for the package, but he "thanked" the postal carrier for its delivery and wished him to have a nice day.²

¹ In the event that no one had answered the door, Inspector Zeeb testified that he would have left the package at the door in accordance with the Post Office's standard procedure. *See, e.g., United States v. Brown*, No. 15-4067-03-CR-C-SRB, 2017 WL 3275970, at *4 (W.D. Mo. July 21, 2017), report and recommendation adopted, No. 2:15-CR-04067-SRB-3, 2017 WL 3275719 (W.D. Mo. Aug. 1, 2017), appeal dismissed, No. 17-2807, 2017 WL 7689963 (8th Cir. Aug. 21, 2017) (noting that the postal inspector testified that leaving the package at the front doorstep was consistent with both Postal Inspector and Postal Service Policy in terms of making a delivery).

² Although the defense contended that the package was essentially forced onto Nwokah and beyond the door's threshold [Exb. C], the Court finds this contention to be unsupported. Not only is such a factual version inconsistent with Inspector Zeeb's credible testimony concerning the

While Agent Rochon was not positioned to see the package's delivery, he received radio communication that the package had been delivered and was being moved around the home based on the GPS feedback. Agent Howard, who was tasked with executing the warrant by first breaching the front door of the residence, testified that he never read the warrant's application and he did not see the package's delivery because he was originally stationed about one mile away. It was Agent Howard's understanding that the search warrant could only be executed once the package was actually opened. Within roughly ten minutes of the package's delivery, the trip wire signaled that it had been opened.

Once the signal was received that the package had been opened, Agent Howard and two other police officers approached the residence and announced their presence and possession of a warrant.³ No response was received. Thus, they breached the front door and quickly discovered Nwokah and a screaming infant. Nwokah was arrested and the scene was secured as other officers forced their way through the back door. During the search warrant's execution, officers discovered the tracking powder on Nwokah's hands, along with guns and drugs.

At the evidentiary hearing, Nwokah testified that he was terrified and under duress when law enforcement breached his home and searched it. At one point, Nwokah required the use of his inhaler. Nwokah also testified that without being *Mirandized*, he was asked questions about the criminal investigation and whether he knew anything about the contents of the package. Nwokah further claimed that Agents Rochon and Howard threatened him by indicating that if he

package's typical delivery, but Nwokah's testimony revealed that he expressed thanks for the delivery. Thus, the Court finds that Nwokah voluntarily accepted receipt of the package and brought it into his residence on his own accord.

³ The defense's argument that law enforcement did not possess the warrant upon its execution is not borne out by the evidence. In fact, Agent Rochon testified that he had the search warrant and application with him at the time the search was conducted.

failed to cooperate, he could be imprisoned and lose his home and family. Agents Rochon and Howard denied making (or hearing) any such substantive inquiries or threats.

Within an hour after his home was entered (that is, about the time it took for Nwokah's fiancé to arrive and for police to transport Nwokah to an interview room at the homicide unit), Nwokah was *Mirandized* and interviewed. During the approximately two-hour recorded interview, Nwokah initially denied any knowledge concerning the contents of the packages from Uganda, stating that he thought that they contained Nigerian clothing for a business that he intended to start. Nwokah eventually disclosed how his cousin from Nigeria put Nwokah in contact with a person who wanted to send drugs to the United States and how Nwokah was supposed to receive money for his participation. Nwokah admitted that he was expecting a package of "drugs" from Uganda and that he knew that the previous delivery from Uganda contained "drugs." He also admitted that he was waiting for someone to pick up the drugs. He made these statements during the recorded interview, despite testifying at the suppression hearing that he expected the packages from Uganda to contain materials for making Nigerian wedding party outfits, not controlled substances.

The defendant has moved to suppress his inculpatory statements and the evidence recovered from his residence.⁴

⁴ The search of the residence revealed the open package inside a bedroom, along with a gun safe that had in it: a container of just under 100 grams of heroin, baggies, FedEx labels, packages of suspected methamphetamine, and several dozen prescription pills. Officers found in another bedroom two loaded Sig Sauer handguns with extra clips and ammunition. Officers also found the box from the earlier shipment from Uganda.

II. DISCUSSION

Anticipatory Warrants

The type of search warrant at issue here is referred to as an anticipatory warrant (and is also called a conditional or contingency warrant). “Anticipatory search warrants differ from other search warrants in that they are not supported by probable cause to believe that contraband exists at the premises to be searched at the time they are issued.” *United States v. Dennis*, 115 F.3d 524, 528 (7th Cir. 1997); *see United States v. Grubbs*, 547 U.S. 90, 94 (2006) (“An anticipatory warrant is ‘a warrant based upon an affidavit showing probable cause that at some future time (but not presently) certain evidence of crime will be located at a specified place.’”). “In fact, a court issues an anticipatory warrant with the knowledge that contraband does not presently exist at the location to be searched.” *Dennis*, 115 F.3d at 528 (emphasis added) (citing *United States v. Leidner*, 99 F.3d 1423, 1425 (7th Cir. 1996)). Instead, the court must find that “probable cause exists to believe that contraband will be located at the premises to be searched after certain events transpire.” *Id.*; *see Grubbs*, 547 U.S. at 96 (“An anticipatory warrant requires the issuing judge to determine “(1) that it is *now probable* that (2) contraband [or] evidence of a crime . . . *will be* on the described premises (3) when the warrant is executed.”) (emphasis in original). “Most anticipatory warrants subject their execution to some condition precedent other than the mere passage of time—a so-called ‘triggering condition.’” *Grubbs*, 547 U.S. at 94. If the government were to execute an anticipatory warrant before the triggering condition occurs, then there would be no reason to believe the item described in the warrant could be found at the location to be searched. *Id.* Thus, such a warrant must show that there is a fair probability that contraband or evidence of a crime will be found in the place to be searched if the triggering

condition occurs and there is probable cause to believe that the triggering condition will occur.⁵ *United States v. Elst*, 579 F.3d 740, 744 (7th Cir. 2009) (citing *Grubbs*, 547 U.S. at 96-97); *see also United States v. Brack*, 188 F.3d 748, 757 (7th Cir. 1999) (the requirements of anticipatory search warrants include: (1) that the affidavit present independent evidence that gives rise to probable cause to believe that the contraband will be located at the premises at the time of the search; (2) that the contraband be on a sure course to the location to be searched; and (3) that the conditions governing the execution of the warrant be explicit, clear, and narrowly drawn) (citing *Dennis*, 115 F.3d at 528, 530).

In this case, the defense contends that the warrant is invalid because it failed to set forth sufficient probable cause that contraband would be located in the Roosevelt Road home at the time that the search was to be conducted. The defense refers to there being an insufficient “nexus” between the item to be seized and the criminal behavior. The defense also indicates that the removal of the heroin from the package, as described in Agent Rochon’s affidavit, meant that there was no reason to believe that any contraband or paraphernalia would be located in the place to be searched. Alternatively, the defense argues that the triggering event never occurred and for that reason the warrant was prematurely and unlawfully executed. For the reasons that follow, the Court respectfully disagrees with these contentions.

Upon review of the application and affidavit provided in support of the warrant, the Court finds, based on the totality of the circumstances, at the time the warrant was issued there was probable cause to believe that after successful delivery of the package, contraband would be found at the Roosevelt Road home when the warrant was executed. In addition, the affidavit

⁵ Notably, the Fourth Amendment does not require that the triggering condition for an anticipatory search warrant be set forth in the warrant itself. *Grubbs*, 547 U.S. at 98-99.

established probable cause to believe that the triggering condition would be satisfied. In particular, the affidavit in support of the warrant stated that an agent with ten years' experience with HSI and familiarity with drug trafficking investigations, expected to find evidence supporting a conspiracy to distribute and possess with intent to distribute controlled substances in the Roosevelt Road home. This expectation was premised on locating a pound of heroin "concealed" within black plastic packaging and then "sewn into the ends of a gold colored sash" in the intercepted package. The package was labeled "clothes" and contained several other scarves and sashes that were shipped by express mail from Uganda. Additionally, the affidavit described the procedure that would be in place to conduct the controlled delivery and stated that a law enforcement agent would attempt to deliver the package to the intended residence within the next seven days.

Ultimately, the Court concludes that the information contained in the affidavit could reasonably lead a person to believe that an experienced trafficker in narcotics sent the package and that it was very likely that the address on the package was the one at which it was intended to arrive and that the package would be accepted. *See United States v. Dennis*, 115 F.3d 524, 530 (7th Cir. 1997) (citing *United States v. Lawson*, 999 F.2d 985, 988 (6th Cir. 1993)). Once the package was accepted and brought into the home, one could reasonably draw the inference that indicia of drug-trafficking would be found at the recipient's home. *United States v. Orozco*, 576 F.3d 745, 749 (7th Cir. 2009) ("a magistrate evaluating a warrant application is entitled to take an officer's experience into account in determining whether probable cause exists"). Here, the amount of heroin in the package is too large of an amount to be sent on a whim or intended for personal use. *See id.* Moreover, the package was deceptively labeled as containing "clothes" and the heroin was artfully concealed in only one of several sashes in an attempt to avoid its

detection. *See id.* In addition, the initial mailing and ultimate destination of the package was not directed by law enforcement. Moreover, the search warrant would not be (and in fact, was not) executed until the package was brought within the residence. To be sure, the facts of the present case do not substantiate a fear that the government or a third party mailed a controlled substance to a residence to create probable cause to search the premises where it otherwise would not have existed. *See Dennis*, 115 F.3d at 531 (reasoning that in a case such as this, where nothing in the record indicates that the contraband might not have been delivered to the residence to be searched, simply discovering the package in the mail stream and placing it back into the mail stream to effect a controlled-delivery should satisfy the sure course requirement) (citing *United States v. Leidner*, 99 F.3d 1423, 1425 (7th Cir. 1996)); *see Elst*, 579 F.3d at 745-46; *see also United States v. Rowland*, 145 F.3d 1194, 1203 n. 3 (10th Cir. 1998) (recognizing that the “sure course” standard is one way of satisfying the traditional nexus requirement of probable cause).

Here, a sufficient nexus between the package containing hidden distribution quantities of heroin and the Roosevelt Road home existed, along with a sufficient likelihood that the package would be successfully delivered and brought into the home. *See id.* Thus, the affidavit established a reasonable probability that the package’s recipient had engaged in drug activity with others. *Accord United States v. Correa*, 908 F.3d 208, 220, 2018 WL 5780728, at *8 (7th Cir. Nov. 5, 2018) (“[I]f officers have probable cause to arrest someone, there is a good chance they also have probable cause to search his home for evidence”). Moreover, any argument that probable cause was negated by the substitution of the heroin with a non-narcotic look alike substance before the package’s delivery fails to acknowledge that the warrant authorized the search and seizure of not just heroin but packaging materials and other evidence of drug distribution too. Thus, immediately after the package’s delivery, there was probable cause to

believe that the box from Uganda, heroin residue inside the box, and evidence of drug trafficking would be located in the home.

With probable cause supporting the warrant, the Court turns to the defense's alternative argument—which is, that the condition precedent for execution of the search warrant was never met because no signature was obtained upon delivery. The defense has not provided any factually analogous case precedent but argues that *United States v. Perkins*, 887 F.3d 272 (6th Cir. 2018), supports its position.

In *Perkins*, the Sixth Circuit held that the law enforcement officers' controlled delivery of a parcel containing methamphetamine to the defendant's fiancée, who was present at the defendant's residence, did not satisfy the triggering event in an anticipatory warrant which explicitly required that the parcel be hand delivered to the defendant. 887 F.3d at 275 (reasoning that the triggering event in an anticipatory warrant must be "explicit, clear, and narrowly drawn" and judges cannot leave it to law enforcement to manipulate the triggering event after the warrant's issuance) (citing *United States v. Miggins*, 302 F.3d 384 (6th Cir. 2002); *United States v. Ricciardelli*, 998 F.2d 8, 12 (1st Cir. 1993) (observing that those issuing anticipatory warrants must be "particularly vigilant in ensuring that [law enforcement's] opportunities for exercising unfettered discretion are eliminated," and that a triggering event must be "both ascertainable and preordained")). In making this determination, the Sixth Circuit indicated that the focus of the inquiry is whether requiring delivery "to Perkins" as stated in the warrant was a common sense construction of the anticipatory warrant's triggering event, or an unintended hypertechnicality that should be overlooked. *Perkins*, 887 F.3d at 276. Because the Sixth Circuit declined to replace the words "to Perkins" with delivery to "anyone inside the residence," it held that

requiring delivery to the defendant was the only common sense reading of the warrant’s triggering event. *Id.*

But the analysis in *Perkins* didn’t end there. Rather, the Sixth Circuit wrote:

Anticipatory warrants triggered by controlled deliveries are nothing new. Sometimes the government ties the triggering event to a specific person. *E.g.*, [*United States v.*] *Gendron*, 18 F.3d [955] at 966 [1st Cir. 1994] (requiring “receipt by Daniel Gendron”); *Ricciardelli*, 998 F.2d at 9 (requiring “receipt by Steven L. Ricciardelli”). And sometimes the government does not. *E.g.*, *Grubbs*, 547 U.S. at 92, 126 S.Ct. 1494 (requiring “recei[pt] by a person[]”); *Miggins*, 302 F.3d at 394 (requiring that package be “taken by someone”). Here, the government authored a triggering event that called for delivery “to Perkins.” Common sense dictates that the government intended what it wrote.

Perkins, 887 F.3d at 276.

Unlike *Perkins*, in this case, law enforcement found no connection between “Martin Nguyen” (the addressee of the package) and the Roosevelt Road address, nor did Agent Rochon suggest any such connection to the judge who issued the search warrant. In fact, the whole point of conducting the controlled delivery was to see who would accept the package and bring it into the home. Accordingly, unlike the warrant issued in *Perkins*, the warrant issued in this case did not tie the triggering event to a particular person; that is, the identity of the person who ultimately accepted the package at the Roosevelt Road home mattered not (for the purpose of triggering the search).

In addition, the warrant in this case, unlike the warrant in *Perkins* (or any case relied on by the parties), accounted for optional means of delivery—that is, the package could either be delivered by immediate acceptance of someone at the home or delivered by being left on the porch should no one answer the door. Crucially though, both delivery options required that the package be taken “into the residence” before any search could occur. Thus, if law enforcement were to execute the anticipatory warrant before this triggering condition occurred—that is,

before the package was taken inside the home—then there would be no reason to believe the item described in the warrant could be found at the location to be searched. *See Grubbs*, 547 U.S. at 94. On the other hand, the lack of a signature would do nothing to dilute the probable cause finding here, since the package could have been left on the porch without such a signature, and again, the identity of the package’s ultimate recipient didn’t impact whether delivery was successful. Of further note, reading the conditional language to require a signature would not help avoid misunderstanding or manipulation by government agents, *Ricciardelli*, 998 F.2d at 12, or prevent the premature execution of the anticipatory search warrant. *Dennis*, 115 F.3d at 528. That is so because the execution of this particular warrant was conditioned upon the event that someone first took possession of the package (and regardless of signing a receipt), subsequently took the package into the home. *See, e.g., United States v. Brack*, 188 F.3d 748, 757–58 (7th Cir. 1999) (reasoning that the warrant was conditioned on the arrival of drugs at the location to be searched and there was no danger that the police would execute the warrant prematurely).

Accordingly, the Court finds that a common sense reading of the warrant and its supporting documents makes sufficiently clear that the triggering event was having the package taken inside the Roosevelt Road residence. *See United States v. Ventresca*, 380 U.S. 102, 109 (1965) (“where the[] [underlying] circumstances are detailed, where reason for crediting the source of the information is given, and when a magistrate has found probable cause, the courts should not invalidate the warrant by interpreting the affidavit in a hypertechnical, rather than a commonsense, manner.”). Once this event occurred, the search could be lawfully executed based on the reasonable premise that the occupant of the home was involved in drug dealing. *See, e.g., United States v. Vesikuru*, 314 F.3d 1116, 1123 (9th Cir. 2002) (probable cause hinged upon the occurrence of two triggering events, acceptance of the package by someone at the residence and

agents observing the package being taken into the residence; and even though agents did not “see” the delivery, after learning that the package was neither on the porch nor in the vehicle, and that it had been opened, the agents reached the logical conclusion that the package had been taken into the house and opened by someone, which was sufficient to satisfy the triggering event).

Good Faith

Even if the warrant was deficient in one of the ways claimed by Nwokah, the evidence seized during the execution of the warrant is admissible under the good faith exception to the exclusionary rule. Under *United States v. Leon*, 468 U.S. 897 (1984), it is inappropriate to suppress evidence obtained pursuant to a later-declared invalid warrant if the executing officers reasonably relied on the warrant. *Id.* at 922–23; *United States v. Millbrook*, 553 F.3d 1057, 1061–62 (7th Cir. 2009). That the officers obtained a warrant is prima facie evidence of good faith. *Millbrook*, 553 F.3d at 1062. However, a defendant may rebut this by presenting evidence to establish that: (1) the issuing judge “‘wholly abandoned his judicial role’ and failed to ‘perform his neutral and detached function,’ serving ‘merely as a rubber stamp for the police,’” *United States v. Olson*, 408 F.3d 366, 372 (7th Cir. 2005) (quoting *Leon*, 468 U.S. at 914); (2) the affidavit supporting the warrant “‘was ‘so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable,’” *id.* (quoting *Leon*, 468 U.S. at 923); or (3) the issuing judge “‘was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth,’” *Leon*, 468 U.S. at 923. In determining whether the good faith exception should apply in a particular case, the “‘inquiry is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal despite the magistrate’s authorization.” *Id.* at 922

n. 23. So even if a warrant is facially invalid, the court must review the text of the warrant and the circumstances of the search to ascertain whether the agents might have reasonably presumed it to be valid. *See id.* at 923.

To start, Nwokah has not alleged that the magistrate judge “abandoned his detached and neutral role.” Nor could it be said that Agent Rochon was dishonest or reckless in preparing the warrant’s affidavit at issue. There is no evidence suggesting that the factual assertions set forth in the affidavit by Agent Rochon were not true. Moreover, Agent Rochon’s testimony credibly established that the language of the anticipatory warrant was intended to mirror what he believed were the typical delivery requirements of the Post Office. Thus, even if he made a mistake in preparing the warrant’s application by noting that a signature should be received upon personal delivery, no one could reasonably call his actions “reckless.” This is important because in deciding whether the extreme sanction of suppression is proper, under the *Leon* good faith exception, courts should consider whether the officers were merely negligent as opposed to having acted recklessly or deliberately. *See Herring v. United States*, 555 U.S. 135 (2009). It is also clear from the preceding discussion that it was objectively reasonable for the police to believe that probable cause existed once the package entered the home to be searched. Investigation by law enforcement revealed that this particular package contained distribution quantities of heroin secretly hidden inside a sash, and that a prior package (also from Uganda) had been delivered to the same home just weeks prior to the search’s execution. Moreover, the search warrant was not executed until the package was delivered, was moved about the home, and was finally opened inside of the home. In fact, agents had placed a trip wire in the package, so they would be alerted when the package was actually opened—further evidencing that the person who opened it was the intended recipient and that it was time to execute the search. As a

result, even if the warrant in this case was insufficient—and to repeat, the undersigned does not believe that it was—the good faith exception would preclude suppression.

Public Policy

Finally, the Court rejects defense counsel's passing reference to the fact that public policy concerns ought to prevent law enforcement from being permitted to search a home for contraband when oftentimes mail is delivered to unintended recipients. The scenario offered by the defense is not supported by the facts of this case. Prior to the issuance of the search warrant, Nwokah had already received a similar package from Uganda at the Roosevelt Road home. Agents Rochon and Howard knew about this prior delivery. In addition, law enforcement knew that the second package from overseas contained skillfully concealed distribution quantities of heroin. Thus, consistent with Nwokah's recorded statement to police (and despite his incredible in court testimony to the contrary), Nwokah expected the second package, believed that the package contained drugs, anticipated that someone else would retrieve it (along with the previous batch of drugs), and awaited compensation for his role in the criminal activity. The police secured a warrant premised on probable cause and executed it in good faith. Thus, public policy concerns do not support the suppression of this evidence.

Because execution of the warrant was lawful, any inculpatory statements made by Nwokah cannot be suppressed as fruit of the poisonous tree.⁶

⁶ And as the government notes, because police had probable cause to arrest Nwokah (even if the arrest was made in the home in violation of *Payton*—which it wasn't), the exclusionary rule would not bar the government's use of Nwokah's statements made outside of his home. *See New York v. Harris*, 495 U.S. 14 (1990); *United States v. Roche-Martinez*, 467 F.3d 591, 593 (7th Cir. 2006).

Involuntariness

During the evidentiary hearing, defense counsel suggested for the first time that agents essentially interrogated Nwokah prior to his receipt of *Miranda* warnings and that Nwokah's statements were the product of extreme duress and were therefore involuntarily given. The defense has made this argument without clearly identifying which particular statements were inculpatory and deserving of suppression. In any event, the Court does not believe Nwokah's version of events; but, rather, finds credible the consistent accounts by Agents Rochon and Howard, who indicated that they avoided soliciting any information from Nwokah about the investigation until the interrogation could be recorded at the homicide unit. During the lengthy recorded interview, Nwokah remained calm and in no apparent acute distress. Moreover, even if the agents indicated that Nwokah might face the natural consequences of being prosecuted, such as the loss of his liberty and assets, this is not the first time Nwokah faced such consequences (as revealed by Nwokah's cross-examination), and therefore, he was unlikely as startled by them as he claims. More importantly, the facts of this case do not establish that the agents used improper threats or coercion or did anything else to render Nwokah's statements involuntary (whether uttered before or after the *Miranda* advisement). *See United States v. Stadfeld*, 689 F.3d 705, 709 (7th Cir. 2012) (noting that a confession is voluntary and admissible if, in the totality of circumstances, it is the product of a rational intellect and free will and not the result of physical abuse, psychological intimidation, or deceptive interrogation tactics that have overcome the defendant's free will) (citations omitted).

III. CONCLUSION

For those reasons, the Court DENIES the motion to suppress [DE 19].

SO ORDERED.

ENTERED: April 26, 2019

/s/ JON E. DEGUILIO
Judge
United States District Court